2: Schapera E-4, 5 (no date) 1930
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Nama

of the tribe. The eldest of them presides over the proceedings; the others are his assessors, *ku-ungu*, and can take part freely in the examination of the litigants or accused and of the witnesses. One of them also acts as public prosecutor, another as advocate for the defence (*gewaka-aob*, intercessor). The post of councillor, as we have seen, is honorary and carries no salary, but certain court fees are levied in trials. The complainant must deliver a couple of fat goats in advance in order to have his case heard, and these provide food for the judges as long as the court sits. The defendant also may be required to contribute a similar fee, even before the verdict is arrived at. 693

The initiative in any legal proceedings lies in the hands of the complainant. Self-help is not permitted. He must lodge his grievance with the official known as the magistrate. The latter then summons the councillors, who assemble together on the day fixed for the hearing. The court meets as a rule out in the open, under the shade of some tree, where all squat in a circle. The litigants or accused and the witnesses are then summoned by the public messenger, who as sign of his function carries with him a long stick. With this, on entering the hut of the defendant, he knocks three times on the ground, without speaking a word. Then he goes away as silently as he came. The defendant now knows that his presence is required. If he refuses to appear, which in fact seldom happens, or fails to send an acceptable excuse in time, several strong men are sent to take and bring him by force. For defying the summons he then receives a special flogging. If he is accused of some crime, and is suspected of meditating flight, he is brought before the court with a rieme round his neck and his hands tied behind his back. Witnesses summoned are obliged to appear, and if they do not are fetched and punished in the same way as the defendant. The latter must stand or kneel in the centre of the court circle, but if a woman is permitted to sit. The complainant stands or squats nearby till he is called upon to speak, and the summoned witnesses must also remain within a reasonable distance. 694 [681] 695

The magistrate now states the case to the council. The chairman then calls on the complainant to speak, next on the defendant and on all the witnesses one after the other. One witness as a rule is sufficient, but more are desirable. No hearsay evidence is allowed; only what the witness has himself seen and heard is admitted as valid. False testimony is severely condemned, the perjurer being punished according to the mischief he causes. Examination and cross-examination are conducted by the councillors. They rarely employ direct [681] 695 195

2 [or, a thick strip of athlete. – Author]

681 cute with a stick until ultimately, in the olden days, the death
685 sentence was decided upon. At the present time, the matter is then referred to the law-courts. In the case of corporal punishment the sentence was usually based on the principle of: Eye for an eye and tooth for a tooth—unless the parties
682 agreed upon another form of indemnity. Murder, high
687 treason, attempted murder of the chief and incest were always
684 punished with death according to the deposition of the old people. For the execution of corporal punishment a bailiff was appointed and fines were collected by the magistrate.

673 6. Generally they regard disrespectful behaviour towards the old, murder, homicide, bodily injury, theft, illegitimate impregnation and treason as punishable offences.

Lies and perjury are also deemed improper, but are not subject to legal punishment. In the same way adultery is
835 not punishable. Incest becomes a case for the law only when the father refuses to be responsible for the maintenance of the child during its first years, namely, the time when it needs the nursing of the mother. As soon as the child is five years
678 of age, the father takes it and the payments, which as a rule were in cattle and to-day are in money, cease.

It cannot, however, be said that these forms are valid everywhere where there are still unbroken Nama tribes ruled by a chief; and although they still know their old laws, they do not avail themselves of them in every case.

421 7. The proprietary rights of the old Nama were not extensive, and those of the present generation are still more limited as a result of the fact that they hardly possess any lands. Generally speaking we may say that the individual possesses nothing but is the usufructuary of what the family possesses. This even includes clothes and things for daily use.

422 Under personal property one understands the possession of cattle. A child even may receive one or more goats from his father and he uses their milk. He has the right to milk such goats without permission and their progeny are his property. Where natural conditions make it possible every person—man, wife, child—possess a few goats, sheep or even cattle. When these are to be sold it becomes manifest that this personal property continues to be regarded as family property, because in such cases, the whole family and not the individual decides whether there should be a sale or not.

423 The land or their tribal territory can under no circumstances become the property of an individual, neither is it the property of the chief. He has not got the right to dispose of or to give away anything of the territory which, in all respects, is regarded as common tribal property, unless the money received be divided amongst the families of the tribe, after they have consented to such a sale. The boundaries of a tribal territory, however, are not fixed. All lands and grounds where members of a tribe have previously grazed